Calendar No. 596

100TH CONGRESS
2d Session

SENATE

REPORT
100–306

INDIAN DEVELOPMENT FINANCE CORPORATION ACT

MARCH 22 (legislative day, MARCH 21), 1988.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 721]

The Select Committee on Indian Affairs, to which was referred the bill (S. 721) to establish the Indian Development Finance Corporation Act, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

The amendment is as follows:

That this Act may be cited as the "Indian Development Finance Corporation Act".

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

SEC. 2. (a) The Congress finds that—

(1) a special relationship has existed between the United States and the Indian tribes which is recognized in clause 3, section 8, article I of the United States Constitution,

(2) Congress, through statutes, treaties and the exercise of administrative authorities, has implemented the Federal Government's responsibility for the protection and preservation of Indian tribes and their resources,

(3) despite the availability of abundant, natural resources on Indian lands and a rich, cultural legacy which places great value on self-determination, self-reliance and independence, American Indians and Alaskan Natives experience poverty and unemployment along with the associated incidences of social pathology, to an extent unequaled by any other group in America,

(4) the reasons for such unparalleled poverty and unemployment have been widely studied and documented by the Congress, the General Accounting Office, the United States Department of the Interior, private academic institutions and the Indian tribes themselves and that such studies have consistently identified as fundamental obstacles to balanced economic growth and progress—

(A) the very limited availability of long term development capital and sources of financial credit necessary to support the development of a private sector economy in Indian country comprised of Indian owned business enterprises,

(B) the lack of effective control by the Indians over their own lands and resources, and

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(C) the scarcity of experienced Indian managers and technicians,

(5) previous efforts of the Federal Government directed at stimulating Indian economic development through the provision of grants, direct loans, loan guarantees, and interest subsidies have fallen far short of their objectives due to—

(A) inadequate funds,

(B) lack of coordination,

(C) arbitrary project selection criteria,

(D) politicalization of the delivery system, and

(E) other inefficiencies characteristic of a system of publicly administered financial intermediation, and

(6) the experience acquired by multilateral lending institutions among the so-called lesser developed countries has demonstrated the value and necessity of development financing institutions in achieving economic growth in underdeveloped economies and societies which are strikingly similar to Indian and Alaskan Native communities in relation to such matters as control over natural resource management and the absence of experienced, indigenous managers and technicians, as well as the availability of long term development capital and private sources of financial credit.

(b) It is hereby declared to be the policy of Congress that, in fulfillment of its special and longstanding responsibility to the Indian tribes, the Federal Government should provide assistance to the Indian people in their efforts to break free from the devastating effects of extreme poverty and unemployment and achieve lasting economic self-sufficiency through the development of the private sector of tribal economies by establishing a federally chartered, mixed ownership development financing institution which shall provide a broad range of financial intermediary services including working capital, direct loans, loan guarantees and project development assistance utilizing the proven efficiencies of the private market mode of operation.

DEFINITIONS

SEC. 3. (a) For purposes of this Act—

(1) The term "Indian" means any person who is a member of any Indian tribe.

(2) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, which is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians including any Alaska Native village or regional or village corporation as defined in, or established under, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(3) The term "reservation" means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or land held by any Alaska Native village or regional or village corporation (as defined in, or established under, the provisions of the Alaska Native Claims Settlement Act).

(4) The term "tribal organization" means the governing body of any Indian tribe or any entity established, controlled, or owned by such governing body.

(5) The term "Indian business enterprise" means any commercial, industrial or business entity—

(A) at least 51 percent of which is owned by one or more Indian tribes, and

(B) which produces or furnishes goods, services, or facilities, which is operated or organized on a for-profit basis and

(C) which is chartered, or controlled by any Indian tribe or tribal organization which is a shareholder of the Corporation and

(D) whose—

(i) principal place of business is located within, or adjacent to, the boundaries of an Indian reservation, or

(ii) principal business activities in addition to the production of a stream of income are determined by the Corporation to be directly beneficial to an Indian tribe and contribute to the economy of such Indian tribe.

Such term includes any subsidiary entity which is owned and controlled by any commercial, industrial or business activity described in the preceding sentence.

(6) The term "Corporation" means the Indian Development Finance Corporation established under section 101(a).

(7) The term "Secretary" means the Secretary of the Interior.

(b) References to Alaska Native villages or to regional or village corporations in this Act shall not grant or defer any status or powers other than those expressly

enumerated in this Act. Nothing in this Act shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

TITLE I—ESTABLISHMENT OF CORPORATION

CREATION

SEC. 101. (a) There is hereby established the Indian Development Finance Corporation.

(b) The Corporation shall have succession until dissolved by Act of Congress. Only the Congress shall have the authority to revise or amend the charter of the Corporation.

FUNCTIONS

SEC. 102. (a) It shall be the duty of the Corporation to—

(1) provide development capital through the financial services that the Corporation is authorized to provide under subsections (b), (c), and (d);

(2) encourage the development of new and existing Indian business enterprises eligible for its assistance by providing and coordinating the availability of—

(A) long term capital and working capital,

(B) loans, loan guarantees and other forms of specialized credit, and

(C) technical and managerial assistance and training;

(3) maintain broad based control of the Corporation in its voting stockholders;

(4) encourage active participation in the Corporation by Indian Tribes by ownership of its equity securities; and

(5) assist in strengthening Indian tribal economies through the development of Indian business enterprises whose activities are directed at contributing to such economies.

(b)(1) The Corporation may—

(A) make loans or commitments for loans to any Indian business enterprise, or

(B) purchase, insure or discount any obligations of an Indian business enterprise, if such enterprise meets the requirements of paragraph (2).

(2) An Indian business enterprise meets the requirements of this paragraph if the Corporation makes an independent determination that—

(A) such enterprise has or will have—

(i) a sound organizational and financial structure,

(ii) income in excess of its operating costs,

(iii) assets in excess of its obligations, and

(iv) a reasonable expectation of a continuing demand for—

(I) its production, goods, commodities, or services, or

(II) its facilities, and

(B) the loan or obligation of such enterprise will be fully repayable in accordance with the terms and conditions of such loan or obligation.

(3)(A) In setting the terms, rates, and charges for loans made under this subsection the objective of the Corporation shall be to provide the type of credit needed by Indian business enterprises at the lowest reasonable cost and on a sound business basis, taking into account—

(i) the cost of money to the Corporation,

(ii) the necessary reserve and expenses of the Corporation, and

(iii) the technical and other assistance attributable to loans made available by the Corporation under this subsection.

(B) The terms of any loan made under this subsection may provide for interest rates which vary from time to time during the repayment period of the loan in accordance with the rates being charged by the Corporation for new loans at such times.

(4) The proceeds of a loan made under this subsection may be advanced or reloaned by the borrower to its members or stockholders for the development of individually owned businesses on or adjacent reservations under circumstances permitted under the bylaws or rules of the Corporation.

(c)(1) The Corporation may guarantee all or any part of the principal and interest of any loan made by any State or federally chartered lending institution to any Indian business enterprise if—

(A) such loan is to an Indian business enterprise that meets the requirements of subsection (b)(2), and

(B) such loan was made on terms and conditions (including the rate of interest) which would be permissible terms and conditions if such loan were a direct loan made by the Corporation.

(2) The Corporation may impose a charge for any loan guarantee made under this subsection.

(3) No loan may be guaranteed by the Corporation under this subsection if the income from such to the lender is excludable from such lender's gross income for purposes of chapter 1 of the Internal Revenue Code of 1986.

(4) Any loan guarantee made under this subsection shall be assignable to the extent provided in the contract of guarantee entered into by the Corporation.

(5) Any guarantee made under this subsection shall be uncontestable, except in the case of fraud or misrepresentation of which the holder had actual knowledge at the time the holder acquired the loan.

(6) The Corporation, in lieu of requiring the original lender to service a loan guaranteed under this subsection until final maturity or liquidation, may purchase such guaranteed loan for an amount equal to the balance of the principal and the amount of interest accrued thereon without penalty if the Corporation determines that the purchase would not be detrimental to the interests of the Corporation and—

(A) the liquidation of such guaranteed loan would result in the insolvency of the borrower or deprive the borrower of assets essential to its continued operation,

(B) such guaranteed loan will be repayable with revision of the loan rates, terms, payment periods, or other conditions consistent with loans made by the Corporation under subsection (b), and

(C) the lender or other holder of such guaranteed loan is unwilling to make such revision.

(d)(1) For purposes of providing long-term capital and working capital to Indian business enterprises, the Corporation is authorized to purchase, or make commitments to purchase, all, or any portion of, the equity or ownership interest in any Indian business enterprise if the Corporation determines, after a full and complete appraisal of all project and business plans associated with the investment taking into account the criteria set forth in subsection (b)(2) that such an investment does not expose the Corporation to any unreasonable business risks considering the applicable standards prevailing in the field of development finance as applied to Indian economic development (or, in light of the socio-economic, political and legal conditions unique to Indian reservations).

(2) The Corporation is also authorized to supervise or participate in the management of Indian business enterprises in which an investment has been made under paragraph (1) according to such terms and conditions as are agreed to by the Corporation and principals of the enterprise, including the assumption of a directorship in the corporate body of such Indian business enterprise by an officer of the Corporation.

GENERAL POWERS

SEC. 103. In carrying out the provisions of this Act, the Corporation shall have the power, consistent with the provisions of this Act—

(1) to adopt and alter a corporate seal, which shall be judicially noticed,

(2) to make agreements and contracts with persons, Indian tribes, and private or governmental entities and to make payments or advance payments under such agreements or contracts without regard to section 3324 of title 31, United States Code, except that the Corporation shall provide financial assistance only in accordance with this Act,

(3) to—

(A) lease, purchase, accept gifts or donations of, or otherwise to acquire,

(B) own, hold, improve, use, or otherwise deal in or with, and

(C) sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of,

any property, real, personal, or mixed, or any interest therein,

(4) to sue and be sued in its corporate name and to complain and defend in any court of competent jurisdiction,

(5) to represent itself, or to contract for representation, in all judicial, legal, and other proceedings,

(6) to make provision for and designate such committees, and the functions thereof, as the Board of Directors may deem necessary or desirable,

(7) with the approval of the agency concerned, to make use of services, facilities, and property of any board, commission, independent establishment, or ex-

ecutive agency or department of the executive branch in carrying out the provisions of this Act and to pay for such use (such payments to be credited to the applicable appropriation that incurred the expense),

(8) to use the United States mails on the same terms and conditions as the executive departments of the United States Government,

(9) to obtain insurance or make other provisions against losses,

(10) to participate with one or more other financial institutions, agencies, instrumentalities, trusts, or foundations in loans or guarantees made under this Act on terms as may be agreed upon,

(11) to accept guarantees from other agencies for which loans made by the Corporation may be eligible,

(12) to establish, as soon a practicable, regional offices in ordei to more efficiently serve the widely disbursed Indian population,

(13) to buy and sell—

(A) obligations of, or instruments insured by, the United States or any agency or instrumentalities thereof, or

(B) securities backed by the full faith and credit of any such agency or instrumentality,

(14) to make such investments as may be authorized by the Board of Directors of the Corporation,

(15) to establish such offices within the Corporation as may be necessary including offices for—

(A) Project Development,

(B) Project Evaluation and Auditing,

(C) Fiscal Management, and

(D) Research and Development

(E) any other offices as may from time to time be authorized by the Board of Directors, and

(16) to exercise all other lawful powers necessarily or reasonably related to the establishment of the Corporation in order to carry out the provisions of this Act and the exercise of its powers, purposes, functions, duties, and authorized activities.

BOARD OF DIRECTORS

SEC. 104. (a) The powers of the Corporation shall be vested in the Board of Directors.

(b)(1) The Board of Directors shall consist of the following 21 members:

(A) 1 officer of the United States Government designated by the Secretary of the Interior;

(B) 19 individuals who represent the shareholders in the Corporation, and

(C) the President of the Corporation.

(2)(A) The initial members of the Board of Directors described in paragraph (1)(B) shall be appointed by the President by and with the advice and consent of the Senate and shall serve at the discretion of the President.

(B) In making appointments under subparagraph (b)(1)(A) and paragraph (4)(B), the President shall take into account the experience of the individual in private business enterprises and in development or commercial financing and shall consult with, and receive recommendations from Indian tribes.

(3) The term of office for initial members of the Board of Directors described in paragraph (2)(A) shall expire at the commencement of the first annual meeting of the shareholders of the Corporation held as soon as is reasonably possible after the date on which subscriptions have been paid for at least 10 percent of the common stock initially offered for sale to Indians tribes.

(4)(A) Any vacancy on the Board of Directors created by the resignation or removal of a member described in subparagraph (b)(1)(B) shall be filled by the Board in accordance with the By-laws of the Corporation except that such appointment shall only be made for a term extending to the next annual shareholders meeting of the Corporation.

(B) If a vacancy occurs on the Board of Directors prior to the expiration of the term of office to which the member described in paragraph (2)(A) was appointed, the President shall appoint an individual, by and with the consent of the Senate, to fill such vacancy until the expiration of such term of office.

(5) A member of the Board of Directors may be removed from office by the Board only for neglect of duty of malfeasance in office.

(c)(1) The Board of Directors shall establish the policies of the Corporation and shall supervise the management of the Corporation.

(2) A majority of the Board of Directors shall constitute a quorum and except as provided in subsection (d)(2), any action of the Board of Directors shall be effected by majority vote of all members of the Board of Directors.

(3) The Board of Directors shall annually elect from among the members described in subsection (b)(1)(B) a Chairman and Vice Chairman.

(4) The Board of Directors shall adopt, and may amend, such bylaws as are necessary for the proper management and functioning of the Corporation.

(5)(A) The Board of Directors shall meet at any time pursuant to the call of the Chairman and as may be provided by the bylaws of the Corporation, but not less than quarterly.

(B) Subject to such rules adopted by the Board of Directors as are necessary for the orderly conduct of business, all meetings of the Board of Directors shall be open to representatives of Indian tribes, Indian business enterprises, and Indian organizations and any individual who has an identifiable interest in the affairs of the Corporation. The Board of Directors may meet in private executive session if the matter under discussion in such session involves any matter which may impinge on the right of privacy of any individual.

(d) The member described in paragraph (1)(A) shall:

(1) have 20% of the share of votes cast at annual shareholders meetings,

(2) be overruled only by a two-thirds majority vote at regular board meetings in matters involving:

(A) calling of callable capital;

(B) borrowing by the Corporation of amounts in excess of $10 million;

(C) loans or investments made by the Corporation in excess of $1 million; or

(D) the adoption of changes to investment and credit policies.

(e) Each member of the Board of Directors not otherwise employed by the Federal Government or a State government shall receive compensation at a rate equal to the daily rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including travel time, he or she is engaged in the actual performance of his or her duties as a member of the Board of Directors. A member of the Board of Directors who is an officer or employee of the United States Government or of a State government shall serve without additional compensation. All members of the Board of Directors shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

OFFICERS; EMPLOYEES

SEC. 105. (a) The Board of Directors shall appoint a President of the Corporation. The President of the Corporation may be removed from office by the Board of Directors in accordance with the bylaws of the Corporation.

(b) The President of the Corporation shall serve as the chief executive officer of the Corporation. Subject to the direction of the Board of Directors and the general supervision of the Chairman, the President of the Corporation shall have the responsibility for carrying out the policies and functions of the Corporation, and shall have authority over all personnel and activities of the Corporation.

(c) The President of the Corporation, with the approval of the Board of Directors, shall have the authority to appoint and fix the compensation and duties of such officers and employees as may be necessary for the efficient administration of the Corporation. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE

SEC. 106. (a) The financial disclosure provisions of the Ethics in Government Act of 1978 (92 Stat. 1824; Public Law 95-521) applicable to individuals occupying positions compensated under the Executive Schedule shall apply to the members of the Board of Directors, the officers of the Corporation and to employees of the Corporation whose position is compensated at a rate equivalent to that payable for grade GS-16 or above of the General Schedule established by chapter 53 of title 5, United States Code. The financial disclosure provisions of the Ethics in Government Act of 1978 shall apply to the Corporation as if it were a federal agency.

(b)(1) Except as permitted by paragraph (3), no member of the Board of Directors shall vote on any matter respecting any application, contract, claim, or other particular matter pending before the Corporation, in which, to his knowledge—

(A) such member,
(B) his spouse, child, or partner,
(C) an organization other than the Corporation in which he is serving as officer, director, trustee, partner, or employee, or
(D) any person or organization with whom he is negotiating, or has any arrangement concerning, prospective employment,
has a financial interest.

(2) Action by any member of the Board of Directors contrary to the prohibition contained in paragraph (1) shall be cause for removal of such member pursuant to section 104(b)(6), but shall not impair or otherwise affect the validity of any otherwise lawful action by the Corporation in which such member participated.

(3) The prohibition contained in paragraph (1) shall not apply if the member first advises the Board of Directors of the nature of the particular matter in which he or she proposes to participate and makes full disclosure of such financial interest, and the Board of Directors determines by majority vote that the financial interest is too remote or too inconsequential to affect the integrity of such member's services for the Corporation in that matter. The member involved shall not participate in such determination.

(c) Subsection (a) of section 207 of title 18, United States Code (and subsections (f), (h), and (j) of such section to the extent they relate to subsection (a)) shall apply to former members of the Board of Directors, officers, and employees of the Corporation as if they were former officers or employees of the executive branch of the United States Government. Such section shall apply to the Corporation as if it were an agency of the executive branch of the United States Government.

ANNUAL MEETINGS

SEC. 107. (a) The Corporation shall hold an annual meeting of its shareholders which shall be open to the public. At such meeting, the Corporation shall give a full report of its activities during the year and its financial condition and may present proposals for future action and other matters of general concern to shareholders and Indian business enterprises eligible for services from the Corporation.

(b) Shareholders and representatives of Indian business enterprises may present motions or resolutions at the annual meeting of shareholders relating to matters within the scope of this Act and may participate in the discussion thereof and other matters on the agenda of such meeting.

(c) At least 30 days notice of the time and place of the annual meeting required under subsection (a) shall be given to all shareholders.

(d) Each member tribe shall be entitled to vote their common stock on all matters before the annual shareholders meeting and on all matters pertaining to election of the Board of Directors. Shareholders may cumulate their votes based on the number of director positions which are standing for election.

REPORTS TO CONGRESS

SEC. 108. (a) The Board of Directors of the Corporation shall report annually to the appropriate committees of the Congress on the Corporation's capital, operations, and financial condition. Such report shall include recommendations for legislation needed to improve the services of the Corporation.

(b) At the close of the first Calendar year beginning after enactment of this Act, the Corporation shall submit to the Congress a comprehensive, five (5) year organizational development plan which includes:

(1) financial projections
(2) a description of a corporate structure and locations, and
(3) operational guidelines, particularly the coordinating relationship the Corporation has, or will have, with federal domestic assistance programs which allocate financial resources and services to Indian tribes and reservations for economic and business development purposes.

ADVISORY COUNCIL

SEC. 109. (a) There is hereby established the Advisory Council to the Indian Development Finance Corporation (hereafter in this section referred to as the "Council"), which shall provide advice on the policies and operations of the Corporation.

(b) The Council shall consist of—

(1) the Comptroller of the Currency,
(2) the Secretary of Interior, and
(3) the Chairman of the Board of Governors of the Federal Reserve System.

(c) The Council shall—

(1) recommend to the Board of Directors of the Corporation general policy directives,

(2) be available to provide financial and technical assistance upon request of the Board of Directors,

(3) transmit to the Board of Directors and the Congress and annual report with respect to the policies of the Corporation that contains data on the operations and policies of the Corporation, recommendations concerning the Corporation, and such other data and material as the Council may deem appropriate, and

(4) make reports and recommendations to the Board of Directors as it may from time to time request or as the Council may consider necessary to more effectively or efficiently accomplish the purposes of this section or the purposes for which the Council is created.

(d) The Board of Directors of the Corporation shall keep the Council fully informed of its activities and shall provide the Council with such further information or data in its possession as the Council may deem necessary to the appropriate discharge of the responsibilities of the Council under this section.

CONFORMING AMENDMENTS

SEC. 110. (a) Paragraph (2) of section 9101 of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) the Indian Development Finance Corporation."

(b) Paragraph (3) of section 9107(c) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(c) Paragraph (2) of section 9108(d) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"President, Indian Development Finance Corporation.".

TITLE II—CAPITALIZATION

ISSUANCE OF STOCK

SEC. 201. (a)(1) The Corporation is authorized to issue shares of stock in the Corporation in an amount and of such class as may be determined by the Board of Directors subject to the provisions of this section:

(2) Shares of stock in the Corporation may only be issued to and may only be held by Indian Tribes and the United States.

(3) The Corporation is authorized to redeem or repurchase any share of stock issued by the Corporation at a price determined by the Board of Directors.

(b)(1) The Corporation shall make an initial offering of a total of 500,000 shares of common stock of the Corporation for sale at $50 per share to Indian tribes.

(2) The number of such shares of stock required to be purchased by each Indian tribe in order to become a member of the Corporation shall be determined on the basis of an equitable formula established by the Board of Directors taking into account indicators of the economic condition of each tribe applying for membership such economic indicators to be developed by the Board and thereafter applied on a uniform basis.

(3) Twenty percent of the value of the stock to be purchased by each tribe as a condition of membership shall be paid into the Corporation in the form of cash or cash equivalent securities and 80 percent shall be in the form of a legally binding commitment available for call by the Board to meet the obligations of the Corporation but not for use of the Corporation in lending activities or for administrative expenses.

(c)(1) The Secretary is authorized to subscribe to 2,000,000 shares of capital stock in the Corporation.

(2) The Secretary—

(A) shall pay $20,000,000, representing 20 percent of the value of the shares of capital stock in the Corporation subscribed under paragraph (1), to the Corporation within a 2-year period beginning on the date of enactment of this Act, and

(B) beginning in fiscal year 1991, is authorized to agree on behalf of the United States to pay up to $80,000,000, representing 80 percent of the value of the shares of capital stock in the Corporation subscribed under paragraph (1), or any portion thereof, to the Corporation upon call of the Board of Directors of

the Corporation. The amount of this request for funds to establish a reserve for loss, will be determined by the Secretary of the Interior and the Board of Directors based upon an assessment of the need, taking into account a risk analysis of the investment and credit policies and practices of the Corporation. Any commitment to make such contributions shall be made subject to obtaining the necessary appropriations, and shall be made when funds are required to meet obligations of the Corporation for funds borrowed by the Corporation or for loans guaranteed by the Corporation, but not for use of the Corporation in lending activities of the Corporation or for administrative expenses of the Corporation.

(3) The capital stock subscribed by the Secretary on behalf of the United States under paragraph (1)—

(A) shall be valued at $50 per share,

(B) shall be nonvoting stock, and

(C) shall not accrue dividends, and

(D) may not be transferred to any person or entity other than the Corporation.

(d) The Board shall establish policies for payment of dividends to the Corporation's shareholders to be based on sound business practices and fiscal managment principles and which shall give a priority to providing a return on investment based on each shareholders pro-rata interest in income generated from the capital contribution of common stock shareholders as compared to income attributable to capital contributed by the U.S.

(e) The stock or other securities or instruments issued by the Corporation shall, to the same extent as securities which are the direct obligations of the United States, be exempted securities within the meaning of the laws administered by the Securities and Exchange Commission.

BORROWING AUTHORITY

SEC. 202. (a) The Corporation is authorized to issue bonds, notes, and other evidence of indebtedness. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Board of Directors shall determine after consultation with the Secretary of the Treasury.

(b) The aggregate amount of obligations issued under subsection (a) shall not exceed an amount equal to—

(1) the product of ten multiplied by the sum of—

(A) the paid-in capital of the Corporation, plus

(B) retained earnings and profits of the Corporation, and

(2) the book value of callable capital represented by the total commitments of tribal shareholders and the $80 million subscribed to by the United States as provided for in Section 201(c)(2)(B) of this Act

(c) An obligation issued under subsection (a) may be sold through an agent by negotiation, offer, bid, syndicate sale or otherwise and such transaction completed by book entry, wire transfer, or such other means as may be appropriate.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

GENERAL OPERATION EXPENSES

SEC. 301. In addition to amounts authorized to be appropriated under section 302, there are authorized to be appropriated—

(1) $23,000,000 for fiscal year 1989 for the purpose of carrying out the provisions of this Act,

(2) $2,500,000 for each of the fiscal years 1989, 1990, 1991, 1992 and 1993 for the purpose of project development activities, and

(3) such sums as may be necessary to carry out the provisions of this Act for each of the fiscal years 1990 and 1991.

AUTHORIZATIONS FOR PAID-IN CAPITAL STOCK

SEC. 302. There are authorized to be appropriated for each of the fiscal years 1989 and 1990, $10,000,000 for the purpose of carrying out the provisions of section 201(c)(2)(A). Such sums shall remain available until expended. Beginning in fiscal year 1991, such amounts, not to exceed a total of $80,000,000, are authorized to be appropriated for the purpose of carrying out the provisions of section 201(c)(2)(B).

PURPOSE

S. 721, the Indian Development Finance Corporation Act is intended to provide for and promote the economic development of Indian tribes by furnishing the necessary capital, financial services, and technical assistance to Indian-owned business enterprises and to stimulate the development of the private sector of Indian tribal economies.

This bill establishes a federally chartered corporation which will be designed to meet the unique and distinctive needs for Indian business development by serving as a mediator between established sources of private capital and Indian-owned business enterprises. The corporation, which has been modeled after the World Bank in many respects, would be empowered to provide project development assistance to tribes for purposes of establishing business ventures and to assist in financing such projects through a combination of equity investments, direct loans and loan guarantees.

BACKGROUND

This bill is the culmination of over ten years of effort that began with the report of the 1977 American Indian Policy Review Commission (AIPRC). The American Indian Policy Review Commission's highest priority recommendation was to establish a World Bank type of institution to meet the economic development needs of Indian country. In the course of its two year study, the AIPRC documented the extensive needs that exist on Indian reservations for development finance assistance. In order to bring the under-developed economies on the reservations to a level where they may interact with the private business sector, it was felt that the kind of assistance associated with the World Bank was desperately needed.

Following the 1977 report of the Commission, the American Indian Development Corporation (AIDC) in Albuquerque, New Mexico, undertook a comprehensive research project to analyze the experience of the World Bank and the development finance institutions which have been established in Africa, Asia, and other parts of the world with the support of the World Bank. The AIDC organized a group of Indian business specialists, economists and lawyers to see if these World Bank experiences were relevant to the needs and conditions of Indian country.

The AIDC also commissioned an analysis of the barriers to economic development on Indian reservations, and the recommendations of specialists on the ways to overcome these barriers. This research provided comprehensive and substantive support for the recommendation of the AIPRC and it was subsequently compiled and published as a Committee print in the 99th Congress, entitled "American Indian Development Finance Institution—a Compendium of Papers" (S. Rept. 99–142).

The Select Committee on Indian Affairs Committee Print was published in April, 1986 and the final component of the report was a draft of legislation which would implement the recommendation to establish an American Indian Development Finance Institution. Shortly after assuming the Chairmanship of the Select Committee

on Indian Affairs, Senator Inouye introduced S. 721, the Indian Development Finance Corporation Act.

BARRIERS TO INDIAN ECONOMIC DEVELOPMENT

The Select Committee on Indian Affairs held three hearings in the first session of the 100th Congress at which testimony was taken on the Indian Development Finance Corporation Act. The first hearing, entitled, "An Oversight on Barriers of Economic Development on Indian Reservations," (April 9, 1987) established that there was a definite need for a financial institution which would serve as a mediator between commercial banks and other sources of private capital and Indian business. Although there have been some business success stories across Indian country, they are very few and far between. In general, the efforts of Indian people to improve the economic conditions on their reservations are greatly constrained by the great difficulty they experience in accessing private capital. The result is a continuing level of unemployment in excess of 47% and per capita incomes which are less than one-half the national average.

EXPLANATION OF DEVELOPMENT FINANCE

Witnesses at the oversight hearing expressed support for S. 721 as a model approach which they could recommend. Their testimony described the barriers to private sector development, particularly the need for development capital. Development capital, often called venture capital or start-up equity, is normally supplied by individual investors or the venture capital industry. The venture capital industry seeks opportunities for investment in fast growth industries where the rates of return on equity exceed 40% per annum. With few exceptions, those conditions will not exist in Indian country due to the general under-developed conditions of reservation economies.

The other source of investment capital for private companies, identified in most studies, has been generated by pooling of family resources. Individual entrepreneurs traditionally rely upon their own resources for start-up capital since it is a fundamental principal in business that banks do not provide 100% financing for business ventures. The experience of the Indian world is that poverty is very widespread and very few families are able to support the business interest of a family member by pooling their resources to come up with start-up financing.

Numerous studies cited by witnesses before the Committee have also documented the fact that banks are very reluctant to extend credit if a business is located within a reservation boundary and on trust land. These factors are seen by banks as an obstacle to securing loans and create a perception of business risk that discourages private lenders. Thus, where development capital may be available, working capital normally supplied by banks through the extension of a business loan is also very difficult to access.

PROJECT DEVELOPMENT ASSISTANCE FUNCTIONS

In addition to this discussion of investment and working capital, witnesses at the April 9, 1987 hearing reported that a shortage of

experienced management on reservations is an obstacle to Indians exercising control over their own business ventures. Due to the extreme underdevelopment and lack of a middle class from which business managers normally are derived, Indian communities have a great need for institutional assistance in these areas. Unfortunately, experience has shown that governmental institutions, such as the Small Business Administration (SBA) and the Bureau of Indian Affair's (BIA) Indian Financing Office have inherent deficiencies in terms of being able to meet these needs. Although the credit and loan guarantee programs administered by these agencies are valuable resources they cannot be relied upon to provide the level of intensive developmental assistance n eded in the Indian communities. Consequently, the quasi-private corporation proposed in S. 721 is designed to provide direct assistance to Indian communities in analyzing and organizing business ventures and is to be staffed by personnel with extensive private business experience.

The ability of the corporation to participate in the management of a client's business as a condition of injecting equity capital and other forms of financial assistance has not been available to the Indian business world. It is anticipated that the combination of investment incentives and management assistance represented by this corporation would be able to achieve results where Government agencies and purely private corporations have not.

In two subsequent hearings on S. 721 (April 30, 1987 and October 15, 1987), the Committee took testimony from tribal representatives and business development specialists who have worked in Indian country. Testimony was requested from and offered by private financial institutions and investment firms, economists and managers with experience in international finance and the World Bank and the Administration. With the exception of the Administration, whose communications are included, this testimony supported the premises and ideas incorporated into the Indian Development Finance Corporation proposal. Although there are major differences between the World Bank and this proposal, the experiences of the World Bank were seen as relevant to the design of the Indian Development Finance Corporation.

COMPARISON OF COMMERCIAL TO DEVELOPMENT FINANCE

Because of the analogous situation of the Indian tribes to lesser developed countries, the Corporation is modeled after the institutional framework of the World Bank. The following discussion compares and contrasts commercial business financing with development bank functions in order to demonstrate the role of a development finance institution.

1. Commercial banks service immediate business needs

Commercial banks are depository institutions with investment powers. Deposits are the primary source of funds, facilitating the ability to invest because commercial banks can create money and credit, promote payments through the management of the checking account system and extend loans to meet business needs. Other avenues of obtaining funds include the commercial paper markets and retail repurchase agreements.

Commercial bank loan terms are for short and intermediate periods and although they have flexible lending powers they lack the authority to provide equity capital. Short term commercial credit is usually less than a two year term and is often arranged as a "revolving" credit. Interest is payable on a periodic basis, with accrued interest and principal due at maturity. This type of loan is often unsecured.

Intermediate credit, or a "term" loan, is usually three to five years, and may be as much as seven to ten years. Such term loans are normally arranged as a single advance of the full loan amount requiring periodic amortization of principal. Intermediate term loans are often secured.

Interest rates are higher than development loans. The commercial loan rate is usually five to six points above the treasury rate. This interest includes profit, overhead and administrative costs. As addressed in section II, development loans in contrast, are long term with rates several points less than the commercial rate. Interest may only include the treasury rate plus overhead. In addition, where a commercial borrower typically brings the loan package to the bank, a development bank may be involved in the creation of the loan package itself and may also become an investor in the project.

2. Development banks serve long term economic development

The conclusion that commercial lending has been inadequate to meet tribal development needs is well documented. (See, Ruffing, "Initiatives in Development Financing", An American Indian Development Finance Institution—A Compendium of Papers submitted to the Select Committee on Indian Affairs of the United States Senate, ch. III (April 1986)). Contrary to common belief, commercial banks are not a source of venture capital. The terms and conditions of commercial loans are thus inappropriate for long term projects or startup equity. Even where long term loans are available on favorable terms, factors unique to the tribes are barriers to loan approval.

Numerous legal and economic barriers restrict the Indian tribes from obtaining commercial loans. The primary legal barrier to commercial lending to the tribes is the trust status of Indian land. Property owned by the United States government is not available as collateral to commercial lenders. Although tribal development projects may promise high rates of return, lack of technical assistance and tribal managerial skills has perpetuated the perception of tribes as risky investments. The Finance Corporation is intended to provide structural integrity for tribal development, whereby "risk can be reduced by proper project appraisal, technical assistance, monitoring and follow-up—all too expensive for commercial banks to provide". (Id.)

3. The development bank is the most feasible model for the Finance Corporation

The objective of development finance is economic development and includes the more limited objective of business development. The purpose of the Finance Corporation, as with the World Bank, is to make equity investments and loans to private enterprises to

promote economic development and generate an adequate rate of return.

Borrowers are equity investors with funds supplemented by debt instruments. Simply stated, Indian tribes will purchase common stock in the corporation to create a portion of the required equity. The extent of the stock subscription allowable for each tribe will be determined by economic and other criteria. Thus, subscribers will be conferred with a vested interest in the Corporation and will have voting rights.

SUMMARY OF RECOMMENDATIONS ADOPTED BY COMMITTEE

Factors unique to Indian country and the operation of Indian tribes as pointed out by tribal representatives were taken into account in designing the way in which the institution will involve the participation of Indian tribes. The many recommendations which were received in the course of these hearings were evaluated and incorporated into the revisions to S. 721, that are represented in the amendment in the nature of a substitute which was adopted by the Committee during its business meeting on March 3, 1988. The following discussions are intended to summarize these revisions:

Capitalization

The Committee received many recommendations that the Indian Development Finance Corporation should be designed more like the World Bank, particularly in terms of the method of capitalization. The revisions to S. 721 which provide for capitalization and ownership of stock; eligibility for services; and composition of the Board have been designed to build upon this World Bank model. Consequently, the substitute amendment provides only for two classes of stock; common stock which is available for purchase only by Indian tribes, and capital stock, which is authorized for purchase by the Secretary of Interior.

Section 201 provides that the Secretary of Interior shall purchase $100 million of capital stock, 20% of which shall be paid-in and 80% shall be callable capital. Regarding the paid-in capital, $10 million is authorized for purchase in fiscal year 1989 and again in 1990. The Secretary is authorized to pay up to $80,000,000 beginning in fiscal year 1991 to support the callable capital commitment of the U.S. The funds to be requested in FY 1991 will serve as a loss reserve to support the callable capital commitment and a determination of the actual amount to be requested will be based on a risk analysis of the investment and credit policies and practices of the Corporation. It is estimated based on the experience of the BIA's loan guarantee program as an indicator of the credit quality for business loans in Indian country that this may amount to $8,000,000 or 10% of the callable capital commitment.

Board of Directors

In order to represent the interests of the United States in the Corporation, the representative to the Board of Directors to be named by the Secretary of Interior is authorized extraordinary powers and authorities. Although the capital stock issued to the U.S. is non-voting, the Federal representative on the Board is em-

powered to cast a vote which is equal to 20% of the total votes cast at annual shareholder meetings.

In addition to these voting rights at shareholder meetings, the U.S. representative will participate in all meetings of the Baord of Directors. On particularly crucial issues, it is required that the vote of the representative of the Secretary can only be overturned by a ⅔ vote of the rest of the Board of Directors. This super-majority requirement is intended to institute an arrangement of checks and balances whereby the Secretary's representative has extraordinary authority. On the other hand, it is possible for representatives of the tribal shareholders to override the vote of the Secretary's representative if there is a sufficient percentage of agreement and consensus among them on issues which are brought to vote by either the Board of Directors or shareholders at annual shareholders meetings.

To protect the interests of minority shareholders, a provision has been added to insure that these minority shareholders may cumulate their votes and thereby influence such matters as the election of the Board of Directors.

Advisory Council

An Advisory Council similar to the National Advisory Council on International Monetary and Financial Problems (22 U.S.C. Sec. 286b) of the World Bank has been included to evaluate the activities of the Corporation and to advise and make recommendations to the Board of Directors. The Council is composed of the Comptroller of the Currency, the Secretary of Interior, and the Chairman of the Federal Reserve Board. The Council will report annually to Congress on its evaluation of the Corporation and is intended to serve in both a technical support capacity to the Corporation and as a watch dog on behalf of the Congress.

Eligibility for services

The revised bill restricts the Corporation to providing services only to enterprises which are owned and controlled by tribal organizations. The intention is to conform the design of the Corporation to the World Bank model wherein member countries are the only eligible recipients of World Bank services. Although only tribally-owned business enterprises are eligible for the Corporation's services, all forms of joint venture arrangements with established private businesses would be allowed and encouraged. It is also specifically provided that member tribes may apply for and receive equity capital, direct loans or the proceeds of guaranteed loans from or through the Corporation for the explicit purpose of financing the business enterprises of individual tribal members and entrepreneurs. In this way, the design of the Corporation is consistent with the World Bank model while at the same time the services of the Corporation can flow to the small business community on Indian reservations.

The eligibility of business enterprises for Corporation services is not limited to those which are located on or adjacent to Indian reservations. As originally drafted, the bill provided that an enterprise "whose principal business activities contribute to the economy of an Indian tribe" would be eligible for services. This proposal

is based on the assumption that Indian businesses can be located in commercial or trading centers which are geographically removed from the reservation but which are ideally located to advance the economic development of a reservation. For example, a tribe with a significant forestry resource might establish an export trading company located in a major city far from the reservation. Such an enterprise could serve as a sound business venture that would enhance its ability to market raw timber and sawmill products in overseas markets. However, language has been added to the bill to clarify that a business which simply generates an income stream back to the tribal owner in an entirely passive manner is not a "significant contribution" to the economic development of the tribe. It is the intention of this provision that the Board of Directors should develop policies based on the direction provided in the legislation.

Tribal participation

Although the discussion under the "Capitalization" section pointed out changes relative to the status of tribal shareholders, particular emphasis should be placed on the tribal participation which is envisioned in the revisions of S. 721. It is a priority function of the Board of Directors to develop a formula based on economic indicators which can be applied to the conditions of each tribe applying for membership of the Corporation. In the World Bank model these indicators include gross national product, per capita income, balance of trade payments, etc.

The analogy to Indian tribes is clear in that there are relatively few large tribes and many smaller tribes with scarce resources. In addition, tribes have naturally aligned themselves in coalitions with intertribal groups based not only on geographics, but on common tribal ties. It can therefore be assumed that representation on the Corporations Board of Directors would be allocated along these lines.

Similarly, the limit on the percentage of stock that any one shareholder could purchase has been deleted in the substitute amendment. This change is based on the assumption that if a larger tribe applied for membership, the amount of stock they purchase would be determined on the basis of the formula as it applies to that particular tribe. If a very large tribe, such as Navajo, applied and the result of applying the formula was that they owned more than 10% of the outstanding stock, they should not otherwise be restricted in the percentage of outstanding stock that they could own. The restriction in S. 721 was originally for the purpose of avoiding a concentration of ownership, a condition that ran counter to the objective of establishing a Corporation which is open for ownership by all Indian tribes and individuals. Although there would be some concentration under the formula approach, larger tribes which owned more of the stock could not increase their ownership beyond the amount established in the revised formula. Tribes who own a relatively small amount of stock can be expected to form coalitions to enhance and influence their proportional representation.

Dividend policy

In Section 201(d), it is provided that the Board shall establish policies for the payment of dividends to tribal shareholders based on the income generated from the aggregate capital paid in by tribal shareholders as distinguished from income generated from capital contributed by the U.S. Since the paid-in capital of tribal shareholders will be a relatively small percentage of the Corporation's capital base, the most likely way in which it could be used is to be placed in investment accounts that generate market rates of return for money market types of investment. These investment accounts will then form a pool which will be used as a reserve for the loan guarantee program or the credit insurance program. Thus, although they may be obligated in this manner, they will still generate income to the Corporation. The Board of Directors is directed and authorized to pass a reasonable share of such income back to the tribal shareholders in order to insure that a financial return on investment is provided. Such a policy would not be inconsistent with the public policy represented in the legislation and would constitute an incentive to tribal councils to invest scarce tribal funds in the corporation.

Project development funding

In the authorization of appropriations provided in S. 721, a new section has been added authorizing $2.5 million for the first five years after enactment for the purpose of project development. This is a classic development finance function and is a service which is simply not available in the private sector without the sacrifice of ownership and control. However, since many requests for such assistance can be anticipated as soon as the Corporation is organized and operational, the project development activities of the Corporation could constitute a significant percentage of its operating budget. It would be an excessive burden if the Corporation had to support these activities out of its own income during the first five years of its operation. Consequently, an additional $2.5 million in annual appropriations is authorized to insure that the Corporation has the necessary resources to respond to the long neglected economic needs all across Indian country.

ADMINISTRATION POSITION

The Department of the Interior on behalf of the Administration, expressed opposition to S. 721 on the grounds that it will "create another bureaucracy" which duplicates existing programs and does not address underlying economic development problems.

The Administration's conclusion is that the establishment of this new financial corporation would duplicate the loan, loan guarantee and grant programs already available through the Bureau of Indian Affairs administered pursuant to the Indian Financing Act. In addition, the Administration contends that financial services proposed in S. 721 constitute "previously tried solutions and does not addresss the underlying problems of economic development in Indian country".

By way of comment, it is clear that the overwhelming weight of opinion expressed to the Committee in the course of its extensive

hearings on the bill directly contradicts and disagrees with the Administration's assessment of S. 721. The Government has never chartered a development finance institution such as proposed in S. 721. The purpose of the Corporation is to provide services that other programs have not offered: developing business opportunities in light of tribal economics; creating loan packages; technical assistance from pre-inception through implementation; joint-venturing and co-financing.

The Administration indicated it would change its current position and approve S. 721 if several proposals were adopted as amendments to S. 721. These proposals as summarized below, were enumerated in the Department of Interior's letter of March 2, 1988 (at page 3):

1. Deauthorization of existing BIA Credit Program concurrent with the establishment of the Indian Development Finance Corporation

In discussions of the idea of deauthorizing the BIA program by the Committee with tribal representatives and other experts, it is clear that they believe that such action would be premature until the Corporation has been sufficiently established that it would be able to assume such responsibilities. In addition, a majority have advised the Committee that even after the Corporation has been established it may not be advisable to replace the program since not all tribes may join the Corporation and thus be eligible for its services.

It should also be pointed out that the BIA services private entrepreneurs. The Corporation is intended to exclusively serve tribal enterprises. Thus, unless the Corporation is directed to provide services to private entrepreneurs, the BIA Credit Office would definitely be performing needed services. Finally, one of the purposes of the Indian Development Finance Corporation is to work with existing federal programs by complementing their services, not replacing them.

2. Remove the restriction which limits the Corporation to serving only tribal enterprises

The Substitute Amendment provides that the Corporation would only serve the financial needs of its members and that only Indian tribes would be members. As discussed elsewhere in this report, this change was intended to conform this Corporation to the World Bank model for the express purpose of promoting the economic development of the Indian tribes.

World Bank member countries may receive assistance to establish financial institutions or investment companies which serve needs of private enterprises. S. 721 as amended explicitly authorizes this type of project and it would be expected that the Corporation would encourage tribes to take advantage of the Corporation's ability to assist in the development of financial enterprises which would assist the private and small business communities on each reservation.

The Administration contends the World Bank analogy is inappropriate because the Bank has more contributors and is more flexible in the types of loans it may offer. However, the record of

testimony before the Committee established that the World Bank framework and clientele are analogous to the Corporation and its tribal clients. The Corporation model is scaled to the needs of the tribes and like the World Bank, will be expected to work with tribes to improve the overall economy of the tribes' reservations as distinguished from a focus on individual business projects.

At its mark-up on S. 721 this Committee agreed that the Corporation should have a relationship with Indian tribal nations comparable to the World Bank and its member nations. It was also clarified that business enterprises owned and sponsored by Indian tribes must be properly organized to protect against political interference. The Board of the Corporation will have the responsibility of defining credit and investment policies that require this protection and the Corporation management will assist tribes in structuring and organizing business enterprises to accomplish this objective.

3. Provide that the stock in the Corporation purchased by the Federal Government be voting stock

The substitute amendment provides for non-voting stock in return for the Federal Government's contribution. It also authorizes the Government's representative on the Board of Directors extraordinary powers and authorizes in order to protect the federal interest. If the Federal Government's stock was voting stock the Secretary would virtually dictate all Corporation decisions and policies, thereby making the tribal shareholder's participation meaningless.

The balancing of the need to provide proper protection for the federal interest along with meaningful control in the tribal shareholders as represented in the substitute amendment is based on extensive consultation with the experts who have advised the Committee on S. 721, It may be possible in the future to modify the relationship when tribal economies grow stronger with the assistance of the Indian Development Finance Corporation. Tribes will thus be able to provide an increased level of investment making possible an increased level of investment making possible a decrease in the federal investment. However, this is an issue Congress may address in the future.

4. Provide that federal and tribal equity in the Corporation be pooled for purposes of investment in order that the risk of all shareholder's be directly proportional

The pooling of federal and tribal equity is something which the Board of Directors may decide to establish as a matter of policy. However, to prejudge what is basically an investment policy decision would not seem advisable. The development of investment policies is one of the major responsibilities delegated to the Board as is essentially true for all business Corporations.

Where possible, the committee has endeavored to meet the specific objections of the Administration. Cumulative voting has been included to assure that minority shareholders may cumulate their votes to protect their interests in voting at shareholder meetings and in influencing the election of the Board of Directors.

In addition to giving extra powers to the federal Board member, an Advisory Council has been included to assure maximum participation of the Federal Government in directing the policies and direction of the Corporation.

In response to Administration concerns raised about the large amount of funds needed to capitalize the Corporation, the legislation has been modified such that the Secretary of Interior will request funds based solely on anticipated needs of the Corporation.

The role of the Corporation in providing investment capital and assistance in accessing private financing provided by banks and other sources of business credit be consistent with the Presidential Report on Indian Reservation Economies which acknowledged a need for more efficient intermediation between private capital markets and the Indian Reservation economy.

The Corporation as proposed in S. 721 is primarily intended to be a long term institutional resource that would meet needs which the private sector cannot and is not meeting. At the same time, the intent of the Corporation is to overcome the inherent limitations which have characterized the economic development program efforts of government agencies.

Legislative History

S. 721 was introduced on March 11, 1987, by Senator Inouye for himself and Senators DeConcini, Daschle, McCain, Evans and Adams. Senator Inouye chaired three hearings in Washington, D.C. at which testimony was taken on the Indian Development Finance Corporation Act. These hearings took place on April 9, 1987, April 29, 1987 and October 15, 1987.

The House companion bill, H.R. 2455, was introduced on May 18, 1987 by Congressman Richardson for himself and Congressmen Udall, Johnson (S.D.) and Campbell. Two field hearings have been held on H.R. 2455; the first on August 24 in Santa Fe, New Mexico, and the second on August 25 in Denver, Colorado.

Section-by-Section Analysis

Section 1—Title

Provides that the title of the Act may be cited as the "Indian Development Finance Corporation Act."

Section 2—Congressional findings and purpose

This section declares it to be the policy of Congress that, in fulfillment of its special and longstanding responsibility to Indian tribes, the Federal Government should provide assistance to the Indian people in their efforts to break free from the devastating effects of extreme poverty and unemployment. The goal of Indian people to achieve lasting economic self-sufficiency through the development of the private sector of tribal economies would be most appropriately assisted by establishing a federally chartered, mixed ownership development financing institution which shall provide a broad range of financial intermediary services including working capital, direct loans, loan guarantees and technical assistance uti-

lizing the proven efficiencies of the private market mode of operation.

Section 3—Definitions

Contains the definitions for use in this Act. An amendment was adopted during markup to the definition of "eligible Alaska native village or regional or village corporation" to clarify that the bill does not imply that these entities possess sovereign governmental powers but are recognized by the United States as eligible for the programs created by this Act.

Eligible Indian business enterprises mean any commercial, industrial or business activity—

At least 51 percent of which is owned by an Indian tribe, including subsidiary entities,

Which produces or furnishes goods, services, or facilities on a for-profit basis, whose—

(1) Principal place of business is located within, or adjacent to, the boundaries of an Indian reservation, or

(2) Principal business activities, in addition to the production of a stream of income, are determined by the Corporation to be directed at contributing to the economy of any Indian tribe.

TITLE I—ESTABLISHMENT OF CORPORATION

Section 101—Creation

Establishes the Indian Development Finance Corporation.

Section 102—Functions

This section defines the duty of the Corporation to include providing development capital; encouraging the development of new and existing Indian business enterprises; maintaining broad-based control of the Corporation in its voting stockholders; encouraging participation in the Corporation by Tribes by ownership of its equity securities; and assisting in strengthening Indian tribal economies through the development of Indian business enterprises whose activities are directed at contributing to such economies.

The Corporation is specifically authorized to make loans or commitments for loans to any Indian business enterprise which has a sound organizational structure, income in excess of its operating costs, assets in excess of its liabilities and a demand for its goods and services. In setting such terms, rates and charges for loans made under this subsection the objective of the Corporation will be to provide credit to Indian business enterprises at the lowest reasonable costs taking into account the cost of money to the Corporation, the necessary reserve of the Corporation and the technical and other assistance available to the borrower. A point of clarification was made during Committee consideration of the bill emphasizing that in addition to assuring the economic stability of the enterprise seeking assistance, the Board will be expected to establish sound credit and lending policies that will determine the most prudent loans or loan commitments.

The Corporation may:

Make loans or loan commitments to any Indian business enterprise or purchase, insure or discount any obligations of an Indian business enterprise;

Guarantee all or any part of the principal and interest of any loan made by any State of federally chartered lending institutions;

Purchase or make commitments to purchase, all or any portion of equity or ownership interest.

Section 103—General powers

This section defines the general powers of the Corporation to include:

(1) Lease, purchase, accept gifts or donations, own, hold, improve, use, sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of any property, real, personal or mixed or any interest therein;

(2) Sue and be sued and go to court;

(3) Represent itself, or to contract for representation in all judicial, legal, and other proceedings;

(4) Make use and pay for services, facilities, and property of any board, commission, independent establishment, or executive agency or department of the executive branch in carrying out the provisions of this act;

(5) Use the United States mails on the same terms as the executive departments of the U.S. Government;

(6) Participate with other financial institutions, agencies, instrumentalities, trusts or foundations in loans or guarantees under this Act;

(7) Accept guarantees from other agencies for which loans made by the Corporation may be eligible;

(8) Establish regional offices as needed;

(9) Buy and sell

(A) Obligations of, or instruments insured by the United States or any agency or instrumentalities thereof, or

(B) Securities backed by the full faith credit of any such agency or instrumentality;

(10) Make investments;

(11) Establish offices within the Corporation as may be necessary including offices for: Project Development, Project Evaluation and Auditing, Fiscal Management and Research and Development;

(12) Exercise all other lawful powers necessarily related to the establishment of the Corporation in order to carry out the provisions of this Act.

Section 104—Board of Directors

The powers of the Corporations are vested in a twenty-one member Board of Directors. The twenty-one members will represent:

(A) 1 officer of the United States Government designated by the Secretary of Interior;

(B) 19 individuals who represent the shareholders in the corporation;

(C) The President of the Corporation,

The initial members of the Board of Directors would be appointed by the President and confirmed by the Senate. The President would appoint individuals with experience in private business, development or commercial financing. Board members can only be appointed after the President has consulted with and received nominations from tribes. The term of office for initial members of the Board of Directors would expire at the start of the first annual meeting of the shareholders of the Corporation.

This first meeting will be held after the date on which subscriptions have been paid for at least 10 percent of the common stock initially offered for sale to Indian tribes.

The Board of Directors will be responsible for establishing the policies of the Corporation and supervising the management of the Corporation.

The federal representative would:

(1) Have 20 percent of the share of votes cast at annual shareholder meetings;

(2) Be overruled only by a two-thirds majority vote at regular board meetings in matters involving calling of callable capital; borrowing by the Corporation of amounts in excess of $10 million; loans or investments made by the Corporation in excess of $1 million; the adoption of changes to investment and credit policies.

Section 105—Officers and employees

The Board of Directors shall appoint a President of the Corporation who shall have the responsibility for carrying out the policies and functions of the Corporation. The President will also have the authority to appoint and fix the compensation and duties of its officers and employees.

Section 106—Conflicts of interest and financial disclosure

The financial disclosure provisions of the Ethics in Government Act of 1978 shall apply to the Corporation as if it were a Federal Agency.

Section 107—Annual meetings

This section states that the Corporation shall hold an annual meeting of its shareholders which must be open to the public. Each member will be able to vote its common stock on matters before the annual shareholders meeting and on matters pertaining to the election of the Board of Directors. Shareholders may cumulate their votes according to the number of director positions which are standing for election.

Section 108—Reports to Congress

The Board of Directors must report annually to the appropriate committees of the Congress. The report shall include recommendations for legislation needed to improve the services of the Corporation.

Section 109—Advisory Council

An Advisory Council, consisting of the Comptroller of the Currency, the Secretary of the Interior, and the Chairman of the

Board of Governors of the Federal Reserve System is established to advise and make recommendations on the policies and operations of the Corporation. The Council shall make reports to the Board upon request or as it deems necessary and shall report annually to Congress on its evaluation of the Corporation.

Section 110—Conforming amendments

This section amends title 31 of the United States Code by inserting "the Indian Development Finance Corporation" after "the Regional Banks for Cooperatives" in two paragraphs.

TITLE II—CAPITALIZATION

Section 201—Issuance of stock

The Corporation is authorized:

(1) To issue shares of stock in the Corporation in an amount determined by the Board of Directors;

(2) To redeem or repurchase any share of stock issued by the Corporation at a price determined by the Board of Directors.

The Corporation shall offer a total of 500,000 shares of common stock of the Corporation for sale at $50 per share to Indian Tribes. The number of shares of stock available for purchase by each Indian tribe shall be established by a formula established by the Board of Directors, which will take into account economic conditions and other appropriate indicators. Funds held in trust for an Indian tribe may not be used to purchase shares of stock in the Corporation.

The Secretary of the Interior, acting on behalf of the United States, is authorized to subscribe to 2,000,000 shares of capital stock in the Corporation. Subject to the availability of amounts provided in advance by appropriate Acts, the Secretary shall pay:

(1) $20,000,000 representing 20 percent of the shares of capital stock in the Corporation within the 2 year period beginning on the date of enactment of this Act

(2) Up to $80,000,000, representing 80 percent of the value of the shares of capital stock in the Corporation upon call of the Board of Directors of the Corporation. The request will be in the form of callable capital and will be based on an assessment of need, taking into account a risk analysis of the investment and credit policies of the Corporation.

The capital stock subscribed by the Secretary on behalf of the United States:

(1) Shall be valued at $50 per share

(2) Shall be nonvoting stock and

(3) May not be transferred to any person or entity other than the Corporation

The stock or other securities issued by the Corporation shall be "exempted securities".

Section 202—Borrowing authority

The Corporation is authorized to issue bonds, notes, and other evidences of indebtedness. The Board of Directors shall determine after consultation with the Secretary of Treasury the interest rates and other terms and conditions.

The aggregate amount of obligations issued by the Board of Directors shall not exceed an amount equal to the product of 10, multiplied by the sum of the paid-in capital of the Corporation, plus the earnings and profits of the Corporation.

An obligation issued under this subsection may be sold through an agent by negotiation, offer, bid, syndicate sale or otherwise and such transaction completed by book entry, wire transfer, or other means as may be appropriate. No contract, obligation, or other action of the Finance Corporation shall be an obligation of the United States or an obligation secured by the full faith and credit of the United States.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

Section 301—General operational expenses

$2,000,000 is authorized to be appropriated for fiscal year 1989 and such sums as may be necessary for fiscal years 1990 and 1991.

$2,500,000 is authorized for fiscal years 1989, 1990, 1991, 1992 and 1993 for project development activities.

Section 302—Authorizations for paid-in-stock

There is authorized to be appropriated for fiscal years 1989 and 1990, $10,000,000 for the purpose of carrying out the capitalization provisions in this Act.

Beginning in fiscal year 1991, an amount not to exceed $80,000,000 is authorized to carry out the capitalization provisions in this Act.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate of S. 721, as amended, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 14, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 721, a bill to provide for and promote the economic development of Indian tribes by furnishing the necessary capital, financial services, and technical assistance to Indian-owned business enterprises and to stimulate the development of the private sector of Indian tribal economies.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM, *Acting Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 721.

2. Bill title: A bill to provide for and promote the economic development of Indian tribes by furnishing the necessary capital, finan-

cial services, and technical assistance to Indian-owned business enterprises and to stimulate the development of the private sector of Indian tribal economies.

3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs, March 3, 1988.

4. Bill purpose: The bill would establish the Indian Development Finance Corporation, a federally-chartered corporation owned by both the federal government and Indian tribes. The corporation would provide member tribes with financial development assistance for Indian business enterprises through a combination of equity investments, direct loans, and loan guarantees. The corporation would be governed by a Board of Directors composed of 21 members, one of whom would be an officer of the U.S. government designated by the Secretary of the Interior. The bill contains a number of mechanisms for federal government oversight and control of the corporation, including giving the federal government 20 percent of shareholder votes, requiring the corporation to report annually to the Congress, and requiring the creation of an advisory council composed of certain federal officials.

The bill authorizes the Secretary of the Interior to subscribe to 2,000,000 shares of stock in the corporation, and requires the Secretary to pay $20 million (representing 20 percent of the value of the stock) to the corporation within two years of the bill's enactment. The bill authorizes the appropriation of $10 million for each of fiscal years 1989 and 1990 for this purpose. The bill also authorizes the Secretary, beginning in 1991 and subject to appropriation, to agree to pay up to $80 million to the corporation upon call for establishment of a reserve for loss. The bill authorizes the appropriations of $80 million beginning in fiscal year 1991 for this purpose. The bill also authorizes appropriations of $2.5 million in each of fiscal years 1989 through 1993 for project development activities, and $2 million in 1989 and such sums as may be necessary in 1990 and 1991 for operating expenses.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Estimated authorization level	15	15	95	25	30
Estimate outlays	5	15	20	20	25

Basis of estimate: The estimated authorization level and outlays shown above reflect both the federal government's contributions to the corporation and the activities of the corporation. As a mixed-ownership corporation, the net financial effects of the corporation's activities would be on-budget.

This estimate assumes that the amounts authorized in the bill for operating expenses, project development, and the federal government's subscription to the corporation will be appropriated prior to the beginning of each fiscal year. The estimate of the spending authority needed for operating expenses in 1990 and 1991 is based on the 1989 authorized level adjusted for inflation. The estimate reflects the appropriation of $80 million in budget authority

in 1991 for callable capital, but assumes that only $8 million will be called upon by the corporation in that year.

The bill does not specify or indicate expected program levels for the various types of financial assistance to be provided by the corporation. The estimate assumes that after one year, loan guarantee commitments will reach $50 million per year, direct loan obligations will be $10 million per year, and equity investments will total $2.5 million per year. Estimated disbursement rates, repayments, defaults, fees, and other characteristics of the corporation's potential portfolio are based on historical experience in other programs.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Carol Cohen.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 721, as amended, will have a minimal impact on regulatory or paperwork requirements.

Executive Communications

The Committee received the following letters from the U.S. Department of the Interior giving the Administration's views on S. 721:

U.S. Department of the Interior,
Office of the Secretary,
Washington, DC, September 4, 1987.

Hon. Daniel K. Inouye,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: This is to present our views on S. 721, the "Indian Development Finance Corporation Act."

At the outset, we wish to emphasize our support for the goals of this legislation and join with you and the other members of the Committee in encouraging innovative approaches to the problems of economic development on Indian lands. However, for the reasons set forth in this report, we believe that S. 721 would not be an effective mechanism to reach these goals. Therefore, we oppose enactment of S. 721.

S. 721 would establish an Indian Development Finance Corporation (Corporation) which would be authorized to provide development capital to any Indian business enterprise which has a sound organizational structure, income in excess of operating costs, assets in excess of liabilities, and a reasonable expectation of a continuing demand for its goods and services. Each loan granted by the Corporation would be repayable in 40 years or less. In addition. S. 721 would authorize the Corporation to guarantee all or part of the

principal and interest of any loan made by a private lending institution to any Indian business enterprise provided that (a) such enterprise meets the eligibility qualifications for any direct loan from the Corporation; and (b) the loan is made on terms and conditions (including interest rates) equivalent to those for direct loans from the Corporation.

In other provisions, S. 721 would authorize the Corporation to purchase up to 25 percent of the equity or ownership interest in an Indian business enterprise if it is determined that such ownership would not expose the Corporation to unreasonable business risks. When the Corporation makes any equity investments under S. 721, it would be required to supervise or participate in the management of the enterprise, where appropriate. The Corporation would also be required to encourage the development of new and existing Indian business enterprises and encourage participation in the Corporation by tribes through ownership of its equity securities.

The Corporation would be capitalized in part through the sale of 200,000 shares of common stock ($250 per share) and 80,000 shares of preferred stock ($500 per share). At least 60 percent of the voting common stock would be required to be owned by Indians. The maximum direct Federal investment (which, in the case of common stock, could also involve the use of trust funds held by the United States on behalf of an Indian tribe which requests the purchase of stock) in the Corporation's common and preferred stock would be $65 million. In addition, the Secretary of the Interior would be required to loan $35 million to the Corporation for the purpose of providing initial operating funds.

In lieu of S. 721, we suggest that this Committee may wish to review the barriers to better use of existing capital on Indian reservations. S. 721 approaches the continuing problems of Indian economic development with previously tried solutions; namely, loan authority, loan guarantees, and grants. The approach contained in this bill duplicates what is already available, lends itself to the creation of an unnecessary bureaucracy, and does not address the underlying problem.

We believe that Indian tribes do not need a new source of investment capital; instead, they need more good business projects. For the past several years we have been unable to allocate all of the Bureau of Indian Affairs (BIA) funds available for the tribal business projects although BIA funds, unlike Small Business Administration funds, are generally available for the greatest risk projects. We note that S. 721 does not identify the minimum standard for credit approval to be used by the Corporation in determining adequate projects to be funded. Therefore, the Corporation could make loans, loan guarantees, or take equity positions where tribes have weak business management, are engaged in jurisdictional disputes, have rapid turnover in leadership, have an unfavorble business climate, or possess a largely untrained or unreliable labor force. These were, in fact, the problems identified by Indian witnesses before the President's Commission on Indian Reservation Economies. It is difficult to see how the provision of capital alone will overcome these risks, even where the Corporation provides technical assistance.

We suggest to the Committee that a better approach is for the BIA to work with Indian and non-Indian private sector venture capitalists who are experienced at making judgments on these kinds of investments. It is also possible for Indian tribes, through use of their own trust funds, to set up venture capital operations and contract, if necessary, for management services.

As part of its 1983 final report, the President's Commission on Indian Reservation Economies studied the numerous obstacles which confront and impede Indian attempts to achieve economic self-sufficiency. If it were true that insufficiency of capital were the sole variable upon which self-sufficiency depends, then the loans, loan guarantees, and grants already available under the Indian Financing Act of 1974, as amended (25 U.S.C. 1451 et seq.), would have remedied or overcome the obstacles to Indian economic development identified in that 1983 report.

We are advised that the Department of Justice (Justice) has at least the following additional concerns with S. 721:

Certain provisions in the proposed bill relating to the appointment and removal of the Corporation's Board of Directors raise constitutional problems. Specifically, Justice has determined that sections 104(b)(4)(A) and 104(b)(6) are not in accord with the Appointments Clause of the U.S. Constitution (Article II, section 2, cl. 2).

Section 104(b)(2)(B) also provides that in making appointments to the Corporation's Board of Directors, the President shall appoint individuals who represent Indian tribes from nominations submitted by such tribes. We have been advised by Justice that the President's appointment authority of executive officers may not be limited under the Constitution in this manner and, therefore, the statute should be redrafted to indicate that such nominations and criteria are advisory.

Justice suggests that S. 721 raises serious constitutional questions insofar as it may be construed as favoring a particular racial group contrary to the equal protection component of the Due Process Clause of the Fifth Amendment. The Department of Justice strongly disputes the contention that merely because S. 721 relates to Indian tribes and tribal members, it may be considered within the analysis of *Morton* v. *Mancari,* 417 U.S. 535 (1974).

Finally, Justice is concerned that in addition to the above mentioned constitutional concerns, section 103(4) would give the Corporation power to sue and be sued in its corporate name and to "complain and defend" in any court of competent jurisdiction. Section 103(5) empowers the Corporation to represent itself "in all judicial, legal, and other proceedings." This provision is clearly inconsistent with the plenary authority of the Attorney General to conduct all litigation of the United States pursuant to 28 U.S.C. 516.

The enclosed appendix addresses additional concerns with S. 721.

In conclusion, we oppose enactment of S. 721 and recommend instead that the Committee work toward strengthening the existing incentives for private sector businesses to locate on Indian reservations by dealing with the barriers to better use of existing capital. We would be pleased to work with the Committee staff in determining how such private sector opportunities can be best enhanced.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ROSS O. SWIMMER,
Assistant Secretary.

Enclosure.

DEPARTMENT OF THE INTERIOR—ADDITIONAL CONCERNS WITH S. 721

1. It is unclear whether the Indian Development Finance Corporation (Corporation) to be established by section 101 is to function as a finance corporation (in which only hard loans are made) or a true development bank (in which soft loans are made as well). S. 721 appears to contain provisions appropriate for both types of institutions.

2. S. 721 places almost all risk of Corporation operations on the Federal Government. For example, the United States Treasury would fully guarantee all stock and bond purchases. Greater Indian commitment to the success of individual projects could be promoted if at least some of the risk is placed on the Indian beneficiaries.

3. Neither the functions of the Corporation nor the description of the business activities to be assisted indicate whether such activities must be on or near the reservations or have employment or other specific socio-economic impacts on the reservations. Moreover, there is no requirement that private sources for capital be exhausted as a prerequisite for Corporation assistance.

The benefits accorded by S. 721 would seem to apply to any Indian business enterprise with a primary place of business on a reservation, engaged in profit-making activities anywhere. Profitability appears to be a key, if not the prime criterion for Corporation assistance. The federally assisted Corporation would apparently be free to compete with banks and other private sources for capital in order to invest in profitable enterprises which could otherwise succeed without government subsidy.

4. Section 102(b)(4) would permit the proceeds of loans from the Corporation to be passed on to the borrowers' members or stockholders under rules to be established later by the Corporation. We are concerned there is no requirement that such a pass-through be (a) in fulfillment of the purposes of the loan; or (b) not to recipients who would otherwise be ineligible (i.e., non-Indians whose only connection with an activity would be ownership of a share of the borrower's stock).

5. Section 103(14) would allow the Corporation "* * * to make such investments as may be authorized by the Board of Directors of the Corporation." Given the public nature of the Corporation, a more restricted and secure scope of investment would be appropriate, rather than to leave the matter to the unrestricted discretion of the Board of Directors.

6. Section 106, the conflict of interest provisions, does not prohibit a director, officer or employee from participating in any transaction or decision from which they can obtain direct or indirect financial gain.

7. Section 108 would provide extensive tax benefits for the Corporation and its bonds, notes, and other evidences of indebtedness. These benefits would be accorded in addition to other favorable Federal subsidies and in addition to the Corporation's ability to engage in any transaction deemed to be profitable, whether on Indian reservations or elsewhere, and in competition with firms, including Indian firms, which do not have such benefits.

8. Under section 201, relating to issuance of stock, the Corporation is to offer 100,000 shares of stock for tribal purchase. If a tribe purchases any stock, the Secretary is to purchase a matching amount for the benefit of the tribe from Federal funds. A tribe may instruct the Secretary to accomplish the purchase of shares by the tribe by using tribal trust funds (apparently with no Secretarial discretion in the matter). The tribe may then instruct the Secretary to sell any shares purchased from trust funds, with the Federal Government providing any funds necessary to make up any difference between the sales price and the face value of the stock purchased with trust funds. Receipts are apparently placed back into trust. We are concerned that Federal funds for the "second sale" would constitute an interest-free loan from the Treasury to the Corporation (not the tribe). In addition, it is not clear from S. 721 that the Secretary's sale must be another Indian tribe.

9. Section 201(b)(2) would permit the Corporation to "* * * issue shares of stock in such classes having such rights and privileges as the bylaws shall prescribe." Stock termed as "common" and "preferred" is referenced at various points in the bill. However, inadequate detail is provided in S. 721 on the rights and privileges associated with different stock classes. By comparison, the corporation laws of most States as well as the Model Business Corporation Act specify stock classes and associated rights and privileges in considerable detail. We believe the amount of Federal funds involved under S. 721 requires a level of oversight at least similar to what most States have required for corporations involving no State funds.

We are concerned that S. 721 makes no provision for stock subscription requirements, payment for shares, stock rights and options, fractional shares, shareholders preemptive rights, if any, voting of shares and rights of dissenting shareholders.

We also believe that legislation such as S. 721 should specify in detail the rights of each stock class to the assets of the Corporation. Section 201(d) authorizes issuance of preferred stock and subsection (d)(4) states that such stock has "* * * a right of first preference to the assets of the Corporation over all other stock issued by the Corporation." This could mean first preference upon liquidation, but there is no provision which gives this section meaning without further definition as to when the right is vested. Under S. 721 it is not clear that Corporation debts to the United States would be subordinated to preferred stock rights. Typically, preferred stock might have preference to payment of dividends, cumulative dividends, or conversion into other classes of stock, but the bill does not either allow or disallow these or other possible preferences.

S. 721 would require the Federal Government to make a considerable investment in the Corporation through stock purchases and loans. The bill is silent on whether or in what manner appro-

priated funds being managed by the Corporation under section 201 as well as Title II in general would be considered as assets of the Corporation. For instance, would Federal contributions or loans, as such, be available for distribution to stockholders or for use in calculating availability of capital surplus for declaration of dividends?

We also have the following minor technical and editorial comments:

Section 2(a)(5) does not reflect an additional key reason why previous efforts of the Federal Government directed at stimulating Indian economic development have fallen far short of their objectives. Specifically, past Federal assistance has not been made sufficiently contingent on a local Indian commitment for the successful use of development funds.

Section 3(a)(5), limiting the term "Indian business enterprise" to any commercial, industrial, or business activity which is operated for profit, could be unnecessarily restrictive. Some non-profit organizations could make a significant contribution to Indian economic development and have an even greater ability to pay back a loan than some for-profit organizations.

Section 102(b)(1)(A), relating to the functions of the Corporation, the Corporation should require an Indian business enterprise to present at least some collateral as a condition for the issuance of any loan.

Section 103(12), the word "disbursed" should read "dispersed".

Section 104, relating to the establishment of the Corporation Board of Directors. Given that the United States would assume most of the risks resulting from the Corporation's loan and guarantee activities, the configuration of Federal/Indian representatives on the Board would more appropriately be four/three rather than one/six.

Section 201(b)(1), because of the degree of risks assumed by the United States, the percentage of voting common stock which is required to be held by Indian tribes should not exceed 50 percent.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, March 2, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on a proposed amendment in the nature of a substitute for S. 721, the "Indian Development Finance Corporation Act."

We oppose enactment of the proposed amendment in the nature of a substitute for S. 721 unless it is substantially modified as described below.

The substitute for S. 721 would establish an Indian Development Finance Corporation (Corporation) that would be authorized to provide development capital to Indian businesses that meet certain criteria. The corporation would be funded through the purchase of capital stock by the Federal Government and common stock by Indian tribal governments. The tribal governments could subscribe to up to $25 million in stock, of which $5 million would be paid and $20 million callable. The amendment requires the Secretary of the

Interior to subscribe to $100 million of capital stock, of which 20 percent shall be purchased under an appropriation authorization. There is no appropriation authorization for the remaining $80 million.

Eighty percent of the shares subscribed to by the Secretary would be in the form of "callable capital" where the Corporation could borrow or guarantee loans based on the total capital but would not require actual payment of any part of the 80 percent unless necessary. We understand that the sponsor intends this proposal to be modeled after the callable capital concept as used by the World Bank.

We have reviewed the substitute for S. 721 and appreciate the Committee's efforts in rethinking the approach of providing investment capital to Indian tribes through an Indian Development Finance Corporation. However, as Ross O. Swimmer, Assistant Secretary of Indian Affairs, explained in his October 15, 1988, appearance before your Committee, we do not believe that an additional source of investment capital is the answer. Even as amended by the proposed substitute, S. 721 approaches the continuing problems of Indian economic development with previously tried solutions: loan authority, loan guarantees, and grants. The establishment of a new financial corporation would create another bureaucracy with all the problems of any large bureaucracy, would duplicate what is already available, and would not address the underlying problems of economic development in Indian country. Moreover, it places the Federal Government at risk of substantial financial loss and denies it the controls needed to avoid or minimize the risk. Finally, the $100 million price tag to the Federal Government is excessive. Therefore, we continue to oppose S. 721.

The analogy with the World Bank, although interesting, is not necessarily appropriate in all areas. It must be kept in mind that the World Bank not only has more contributors to the Bank's capital, it also has more flexibility in the types of loans it may choose to give. For example, the Corporation would be limited to providing loans to enterprises of which 51 percent is tribally owned. The loans or guarantees of loans to these enterprises would involve high risk loans; otherwise they would have received their needed capital through more conventional means. Therefore, we believe it very likely that the callable capital would be needed in the future.

In addition, we object to limiting economic development financing eligibility to enterprises mostly or entirely owned by tribal governments. The development of sound Indian private sector enterprises, insulated from tribal government politics, should be encouraged.

The Board of Directors of the Corporation would be composed of 21 members—1 Federal representative, 19 individuals representing the common stock shareholders, and the President of the Corporation. The Federal representative would be able to cast 20 percent of the votes at annual shareholder meetings (regardless of the number of shares outstanding or represented at the meeting) and would participate in all meetings of the Board. The vote of the Federal representative at a Board meeting would prevail unless overturned by a two-thirds vote of the Board. Although these provisions appear to provide for some Federal oversight, we do not believe

that this level of Federal participation is commensurate with the level of Federal financial contribution and risk of liability.

Mr. Chairman, we strongly oppose enactment of S. 721, either as introduced or as amended by the proposed substitute, inasmuch as it creates a new Indian economic development program that largely duplicates—at high cost—existing Bureau of Indian Affairs direct loan and loan guaranty programs authorized by the Indian Financing Act. However, we believe that with modifications the bill could serve as a vehicle for authorizing an improved replacement for existing BIA programs. Currently, BIA's credit programs are almost entirely federally operated, with little opportunity for tribal participation in the decisionmaking process at the national level. Federal regulations control program flexibility. In contrast, a joint Federal-tribal, semiautonomous finance corporation could prove more effective at promoting Indian economic development than the Bureau's in-house credit programs.

Accordingly, we would not oppose S. 721 if it were modified to:

Deauthorize, concurrent with establishment of the Indian Development Finance Corporation, the Indian direct and guaranteed loan programs now operated by the Bureau under the Indian Financing Act and the current portfolio of BIA loans and guarantees assigned to the new corporation;

Remove the restriction that limits the corporation to loans and guarantees for enterprises which are mostly or entirely owned by tribes;

Provide that stock in the corporation purchased by the Federal Government would be voting stock, to ensure the corporation's degree of independence from Federal control would be directly proportional to the relative level of financial participation by tribes;

Provide that Federal and tribal equity in the corporation must be pooled for purposes of investment, to ensure all shareholders incur the risks of those investments in proportion to their contribution;

Make various other technical and substantive changes outlined in the attachment to this report; and

Provide for appropriate oversight and control of the spending, borrowing, investment, and other activities of the corporation and to prevent disruptive impacts on the market of Federal and federally related securities.

We also encourage the Committee to look at other means of strengthening the existing incentives for private sector businesses to locate on Indian reservations by dealing with the barriers to better use of existing capital sources.

The enclosed appendix addresses specific concerns with this proposed amendment to S. 721.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RALPH R. REESER,
Acting Assistant Secretary.

Enclosure.

DEPARTMENT OF THE INTERIOR—SUBSTANTIVE AND TECHNICAL CONCERNS WITH THE SUBSTITUTE AMENDMENT TO S. 721

Page 4, Line 8—delete "(43 U.S.C. 1602)" and insert in lieu thereof "(43 U.S.C. 1601 et seq.)," to correct the citation and more precisely indicate that the final phrase of the definition modifies the entire definition and not just the reference to ANSCA.

Page 4, Line 22—Ownership by more than one tribe appears to be unnecessarily precluded.

Page 4, Line 22—Limiting the term "Indian business enterprise" to any entity which is at least 51 percent owned by an Indian tribe is unnecessarily restrictive. Major contributions to economic development should be encouraged by including Indian business enterprises which are not tribally owned. The development of Indian entrepreneurs and strong private sectors on Indian reservations should be the primary strategy being implemented.

Page 4, Line 25—Limiting the term "Indian business enterprise" to any commercial, industrial or business entity which is operated for profit is unnecessarily restrictive. Some non-profit organizations could make a significant contribution to Indian economic development and have an even greater ability to pay back a loan than some profit organizations.

Page 5, Title I—It is not clear who approves the charter of the corporation.

Page 6, Line 23—The provisions of this paragraph appear to be ineffective. This section is weakened by the absence of any requirement of collateral. Increasing the revenue and asset requirements would also strengthen this section.

Page 9, Line 9 and 12—These subparagraphs could send the wrong message to enterprises. It should not be expected that refinancing will be favored over liquidation regardless of the impact on the Corporation. On page 9, line 8 delete "determines" and insert in lieu thereof "determines that the purchase would not be detrimental to the interests of the Corporation and".

Page 13, line 11—Since the Federal Government is incurring most of the risks, the configuration contained in the bill unduly favors the beneficiaries. The Federal Government should be provided a greater proportion of the representation on the Board of Directors.

Page 13, Line 15—The term "President" should be defined as the President of the United States here and other places to avoid confusion with the President of the Corporation.

Page 15, Line 17—Delete "shall" and insert in lieu thereof "of subsection (b) shall".

Page 15, Lines 18 and 20—The United States should have a share of votes cast at all shareholders meetings which is proportional to the risk which it is incurring.

Under that arrangement, its greater representation on the Board would eliminate the need for a veto and override provision.

Page 18, Line 24—For purposes of clarification delete "Subsection" and insert in lieu thereof "Notwithstanding section 105(j) of the Indian Self-Determination Act (25 U.S.C. 450i(f)), subsection".

Page 20, Line 11—Limiting the purchase of common stock to Indian tribes is an unnecessary restriction. In order to encourage Indian entrepreneurs and a stronger private sector on reservations, individual Indians should also be allowed to own voting common stock.

Page 22, Line 22—If the Federal Government is to purchase stock, it should purchase voting stock. In this way, the Indian Development Finance Corporation's degree of independence from the Federal Government would be directly related to the financial contribution made by the United States.

Page 24, Lines 7–16 authorize $2,000,000 or amounts necessary for general expense of the corporation through 1991 and $2,500,000 is authorized for project development activities. We oppose these authorizations.

Page 24, Lines 18–21 authorize $20,000,000 for 20 percent contribution through appropriation. We oppose this authorization.

Changes in Existing Law

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is enclosed in brackets, printed in bold).

TITLE 31—MONEY AND FINANCE

Chapter 91—Government Corporations

§ 9101. Definitions

In this chapter—

(1) "Government corporation" means a mixed-ownership Government corporation and a wholly owned Government corporation.

(2) "mixed-ownership Government corporation" means—

(A) Amtrak.

(B) the Central Bank for Cooperatives.

(C) the Federal Deposit Insurance Corporation.

(D) the Federal Home Loan Banks.

(E) the Federal Intermediate Credit Banks.

(F) the Federal Land Banks.

(G) the National Credit Union Administration Central Liquidity Facility.

(H) the Regional Banks for Cooperatives.

(I) the Rural Telephone Bank when the ownership, control, and operation of the Bank are converted under sec-

tion 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).

(J) the United States Railway Association.

[**(K) the Indian Development Finance Corporation.**]

§ 9107. Accounts

(a) With the approval of the Comptroller General, a Government corporation may consolidate its cash into an account if the cash will be expended as provided by law.

(b) The Secretary of the Treasury shall keep the accounts of a Government corporation. If the Secretary approves, a Federal reserve bank or a bank designated as a depositary or fiscal agent of the United States Government may keep the accounts. The Secretary may waive the requirements of this subsection.

(c)(1) Subsection (b) of this section does not apply to maintaining a temporary account of not more than $50,000 in one bank.

(2)Subsection (b) of this section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

(3) Subsection (b) of this section does not apply to the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives [**the Indian Development Finance Corporation**] of the Federal Land Banks.

§ 9108. Obligations

(a) Before a Government corporation issues obligations and offers obligations to the public, the Secretary of the Treasury shall prescribe—

(1) the form, denomination, maturity, interest rate, and conditions to which the obligations will be subject;

(2) the way and time the obligations are issued; and

(3) the price for which the obligations will be sold.

(b) A Government corporation may buy or sell a direct obligation of the United States Government, or an obligation on which the principal, interest, or both, is guaranteed, of more than $100,000 only when the Secretary approves the purchase or sale. The Secretary may waive the requirement of this subsection under conditions the Secretary may decide.

(c) The Secretary may designate an officer or employee of an agency to carry out this section if the head of the agency agrees.

(d)(1) This section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

(2) Subsections (a) and (b) of this section do not apply to the Rural Telephone Bank (when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a))), the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives. [**the Indian Development Finance Corporation**] and the Federal Land Banks. However, the head of each of those banks shall consult with the Secretary before taking action of the kind described in subsection (a) or (b). If agreement is not reached, the Secretary may make a written report to the corpora-

tion, the President, and Congress on the reasons for the Secretary's disagreement.

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

CHAPTER 53—PAY RATES AND SYSTEMS

Subchapter II—Executive Schedule Pay Rates

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

Associate Administrator of the National Aeronautics and Space Administration.

Assistant Administrators, Agency for International Development (6).

Regional Assistant Administrators, Agency for International Development (4).

Under Secretary of the Air Force.

Under Secretary of the Army.

Under Secretary of the Navy.

Assistant Secretaries Agriculture (5).

Assistant Secretaries Commerce (8).

Assistant Secretaries of Defense (7).

Assistant Secretaries of the Air Force (3).

Assistant Secretaries of the Army (4).

Assistant Secretaries of the Navy (3).

Assistant Secretaries of Health and Human Services (4).

Assistant Secretaries of the Interior (6).

Assistant Attorneys General (10).

Assistant Secretaries of Labor (5).

Assistant Secretaries of State (13).

Assistant Secretaries of the Treasury (5).

Members, United States International Trade Commission (5).

Assistant Secretaries of Education (6).

General Counsel, Department of Education.

Inspector General, Department of Education.

Director of Civil Defense, Department of the Army.

Deputy Director of the Office of Emergency Planning.

Deputy Director of the Office of Science and Technology.

Deputy Director of the Peace Corps.

Deputy Director of the United States Arms Control and Disarmament Agency.

Deputy Director of the United States Information Agency.

Assistant Directors of the Bureau of the Budget (3).

General Counsel of the Department of Agriculture.

General Counsel of the Department of Commerce.

General Counsel of the Department of Defense.

General Counsel of the Department of Health and Human Services.

Solicitor of the Department of the Interior.

Solicitor of the Department of Labor.
General Counsel of the National Labor Relations Board.
Counselor of the Department of State.
Legal Adviser of the Department of State.
General Counsel of the Department of the Treasury.
First Vice President of the Export-Import Bank of Washington.
Special Representative for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency.
Members, Civil Aeronautics Board.
Members, Council of Economic Advisers.
Members, Board of Directors of the Export-Import Bank of Washington.
Members, Federal Communications Commission.
Members, Board of Directors of the Federal Deposit Insurance Corporation.
Members, Federal Home Loan Bank Board.
Members, Federal Energy Regulatory Commission.
Members, Federal Trade Commission.
Members, Interstate Commerce Commission.
Members, National Labor Relations Board.
Members, Securities and Exchange Commission
Members, Board of Directors of the Tennessee Valley Authority.
Members, Merit Systems Protection Board.
Members, Federal Maritime Commission.
Members, National Mediation Board.
Members, Railroad Retirement Board.
Director of Selective Service.
Associate Director of the Federal Bureau of Investigation, Department of Justice.
Members, Equal Employment Opportunity Commission (4).
Chief of Protocol, Department of State.
Director, Bureau of Intelligence and Research, Department of State.
Director, Community Relations Service.
United States Attorney for the District of Columbia.
United States Attorney for the Southern District of New York.
Members, National Transportation Safety Board.
General Counsel, Department of Transportation.
Deputy Administrator, Federal Aviation Administration.
Assistant Secretaries of Transportation (4).
Director of Public Roads.
Administrator of the St. Lawrence Seaway Development Corporation.
Assistant Secretary for Science, Smithsonian Institution.
Assistant Secretary for History and Art, Smithsonian Institution.
Deputy Administrator of the Small Business Administration.
Assistant Secretaries of Housing and Urban Development (8).
General Counsel of the Department of Housing and Urban Development.

Commissioner of Interama.
Deputy Administrator for Policy Development of the Law Enforcement Assistance Administration.
Federal Insurance Administrator, Department of Housing and Urban Development.
Executive Vice President, Overseas Private Investment Corporation.
Members, National Credit Union Administration Board (2).
Members, Postal Rate Commission (4).
Members, Occupational Safety and Health Review Commission.
Deputy Director of the Office of Drug Abuse Policy.
Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).
Members, Consumer Product Safety Commission (4).
Commissioner of Social Security, Department of Health and Human Services.
Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State.
Administrator for Federal Procurement Policy.
Members, Commodity Futures Trading Commission.
Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.
Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.
Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.
Executive Director for Operations, Nuclear Regulatory Commission.
President, Government National Mortgage Association, Department of Housing and Urban Development.
Deputy Administrator, National Oceanic and Atmospheric Administration.
Commissioner of Immigration and Naturalization, Department of Justice.
Associate Administrator, National Oceanic and Atmospheric Administration.
United States attorney for the Northern District of Illinois.
United States attorney for the Central District of California.
Director, Bureau of Prisons, Department of Justice.
Deputy Administrator for Administration of the Law Enforcement Assistance Administration.
Assistant Secretaries of Energy (8).
General Counsel of the Department of Energy.
Administrator, Economic Regulatory Administration, Department of Energy.
Administrator, Energy Information Administration, Department of Energy.
Inspector General, Department of Energy.
Director, Office of Energy Research, Department of Energy.
Assistant Secretary of Labor for Mine Safety and Health.
Members, Federal Mine Safety and Health Review Commission.
President, National Consumer Cooperative Bank.

Assistant Secretary for International Narcotics Matters, Department of State.

Inspector General, Department of Health and Human Services.

Director, Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.

Inspector General, Department of Agriculture.

Special Counsel of the Merit Systems Protection Board.

Inspector General, Department of Housing and Urban Development.

Chairman, Federal Labor Relations Authority.

Inspector General, Department of Labor.

Inspector General, Department of Transportation.

Inspector General, Veterans' Administration.

Deputy Director, Institute for Scientific and Technological Cooperation.

[**President, Indian Development Finance Corporation.**]

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